

TEXT AMENDMENT STAFF REPORT



Hearing Date: NA

Case File #: TA-16-10

General Description: Amend Article 6, Zoning Districts to allow "Privacy Fences (subdivisions)" as a Permitted Use in the BR-2 Zoning District.

☐ Town Initiated

☒ Citizen Initiated

Applicant(s): Town of Sunset Beach

APPLICATION OVERVIEW:

A citizen has initiated an application to amend Article 6, Section 6.04, to allow the use "Privacy fences (subdivisions)" in the BR-2 Zoning District.

STAFF COMMENTARY

Currently, "Privacy fences (subdivisions)" are not allowed in the BR-2 zoning district. A privacy fence is currently allowed for single-family residential uses on the island (BR-2), but not for subdivisions.

Per the UDO, the definition of fence is provided below:

Fence

Any constructed barrier erected along a property line or erected within any setback requirement.

Private roads/streets within subdivisions on the island may create trespassing issues for residents of such property. However, the Planning Board chose to recommend denial of the text amendment due to potential public trust access issues that could arise in the future.

Note: should the Town wish to restrict the use of "Privacy Fence (Subdivisions)" in the BR-2 zoning district (on the island) for access only to private roads/streets then an additional supplemental regulation should be provided in Section 7.09 of the UDO.

SECTION 7.09 PRIVACY FENCES

(A) **Subdivisions.** A privacy **fence** for a single-family **subdivision** may be allowed provided the following requirements are met:

- (1) The **fence** shall extend along and be set back at least three (3) feet from the boundary of the **subdivision** common with several other zoning districts.
- (2) Any height adjustments required by the terrain shall be made by vertical steps.
- (3) Both sides of the **fence** shall be equal in construction and appearance.
- (4) The **fence** shall be uniform in design and constructed with masonry pillars and fencing of painted, treated wood. The top of the wood **fence** shall be not more than six feet above the natural elevation of the ground. The top of the pillars shall extend not more than six (6) inches above the wood **fence**, except where height adjustments are made.
- (5) The design and construction details shall be reviewed and approved by the **Planning Board** prior to construction.
- (6) Maintenance responsibility for the **fence** with **easement** rights shall be specified in the deed covenants of the **subdivision**.
- (7) In the BR-2 Zoning Districts, a privacy **fence** for a single-family **subdivision** shall only be allowed as an entrance gate to a private street or private access easement.

PROPOSAL

The proposed amendment is attached and subsequently amended.

PLANNING BOARD SUMMARY

Action:

- (A) ____ The Planning Board hereby recommends approval of the proposed amendment to the Unified Development Ordinance and finds that it is (i) consistent with Policy 17D of the Town's comprehensive plan (2010 Town of Sunset Beach CAMA Land Use Plan) stating that "The Town shall maintain areas exclusively for conventional single-family dwellings for the growing population on the island and the mainland," and finds (ii) that it is in the public interest because such fences may protect the health, safety, and welfare of citizens on private roads and limit trespassing.
- (B) __X__ The Planning Board hereby recommends denial of the proposed amendment to the Unified Development Ordinance and finds that (i) it is not consistent with a primary goal of the Town's comprehensive plan (2010 Town of Sunset Beach CAMA Land Use Plan) to "Ensure that adequate open space and/or recreational areas, including public trust areas, are provided for and enhanced to serve the growing population" and (ii) it is not in the public interest because access to public trust waters may be negatively impacted in the future.

Recommend Approval (A)____ Recommend Denial (B) __X__

(For __4__ Against __1__ Abstained _____)

Commentary:

[UPDATE for 9-30-16] The Planning Board recommends denial of the citizen-initiated text amendment.

TOWN COUNCIL SUMMARY

Action:

(A) X The Town Council hereby accepts the recommendation of the Planning Board regarding the proposed amendment to the Unified Development Ordinance and has set a public hearing for the following date _____.

(B) _____ The Town Council hereby declines to accept the recommendation of the Planning Board regarding the proposed amendment to the Unified Development Ordinance and is sending the proposal back to the Planning Board for further review for the following reasons: _____.

(For _____ Against _____ Abstained _____) **Commentary: During the December 5, 2016 Council Meeting, the Council tabled this item pending legal advice by the following motion:**

MAYOR PRO-TEM SCOTT MADE A MOTION TO ACCEPT THE PLANNING BOARD RECOMMENDATION TO DENY THE PROPOSED UDO AMENDMENT FOR ARTICLE 6 SECTIONS 6.04 AND 7.09 CONCERNING PRIVACY FENCES (SUBDIVISIONS) AND TO TABLE CONSIDERATION PENDING LEGAL ADVICE. MAYOR FORESTER CALLED FOR A VOTE AND THE MOTION CARRIED BY UNANIMOUS VOTE.

The Council is required by NCGS 160A-364 to hold a Public Hearing to hear public comments prior to taking action. Council is requested to schedule a Public Hearing for August 7, 2017 at 7:00 pm.

SECTION 6.04 TABLE OF PERMITTED/SPECIAL USES

P - Permitted Use

S - Special Use

PS - Permitted Use with Supplemental **Regulations**

SS - Special Use with Supplemental **Regulations**

Uses	Primary Zoning Districts															Supplemental Regulations
	MR 1 p.6- 17	MR 2 p.6- 19	MR 2A p.6- 21	MR 3 p.6- 22	MB 1 p.6- 24	MB 2 p.6- 26	BR1 p.6- 27	BR2 p.6- 29	BB1 p.6- 31	MH 1 p.6- 33	MH 2 p.6- 35	RI1 p.6- 37	CR 1 p.6- 39	AF1 p.6- 41	MUD *	
Privacy fences (<i>subdivisions</i>)	PS	PS	PS	PS				PS								Section 7.09